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January 26, 2010

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

VIA ELECTRONIC FILING

Re: STB Finance Docket No. 35141 U S Rail Corporation -  
Construction and Operation Exemption – Brookhaven Rail Terminal

Dear Ms. Brown,

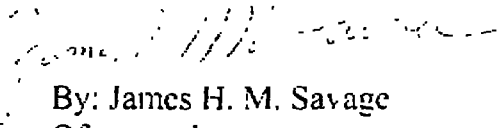
By way of response to the Town of Brookhaven's January 19, 2010 motion to strike, Petitioner U S Rail Corporation ("U S Rail") repeats and reiterates its recitation of the facts and procedural history set forth in its December 30, 2009 status report. Further, U S Rail Corporation denies each and every assertion, accusation and intimation made by the Town in its moving papers as factually and legally unsupported by the record, the regulations or Board precedent.

U S Rail Corporation does not intend to submit any further response to the motion and accordingly respectfully requests the Board deny the Town's requests for relief as soon as possible and without waiting for the 20 day time period for response to expire.

The Board's June 12, 2009 Decision explicitly authorizes either party to this proceeding to request reinstatement of the procedural schedule. Such authorization is not conditioned upon the consent of the other party. Accordingly, Petitioner respectfully renews its request that the Board immediately restore this matter to its

active docket, and issue a Scheduling Order establishing dates for U S Rail's response to Brookhaven's Motion to Compel Discovery, Brookhaven's response to U S Rail's supplemental petition, and US Rail's reply thereto.

Respectfully submitted.  
John D. Heffner, PLLC

  
By: James H. M. Savage  
Of counsel

*Attorneys for Petitioner  
U S Rail Corporation*

#### CERTIFICATION OF SERVICE

I, James H. M. Savage, an attorney-at-law of the District of Columbia, certify that I have served this day by electronic mail a true copy of the within pleading upon counsel for the Town of Brookhaven and by first class mail upon the New York State Department of Transportation.

  
James H. M. Savage

Dated: January 26, 2009

#### SERVICE LIST

Party of Record: Town of Brookhaven	Mark A. Cuthbertson Law Offices of Mark A. Cuthbertson 434 New York Avenue Huntington, NY 11743
Party of Record: New York State Department of Transportation	Robert A. Rybak 50 Wolf Road Albany, NY 12232